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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF OREGON
9 PORTLAND DIVISION

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12 GREGORY BARNHART, JOE CONYARD,
13 DOUGLAS FRANK, THOMAS
14 HEFFLINGER, JOHN HOWE, DON LEASK,
15 SAMUEL NESBITT, ANNA REUTOV, ERIC
SKINNER, and JUHA TUOMINEN,

No. 3:13-cv-00669-
HU

**OPINION AND
ORDER**

16 Plaintiffs,

17 v.

18 PROSPECT MORTGAGE, LLC,

19 Defendant.
20 COUNSEL

21 Steven D. Larson, Stoll Stoll Berne Lokting & Shlachter PC,
22 Portland, Oregon, for the plaintiffs.

23 Adam W. Hansen, Nichols Kaster, LLP, San Francisco, California,
for the plaintiffs.

24 Todd A. Hanchett, Stoel Rives LLP, Portland, Oregon, for the
defendant.

25 Andrew M. Paley, Seyfarth Shaw LLP, Los Angeles, California, for
the defendant.

26 Brandon R. McKelvey, Seyfarth Shaw LLP, Sacramento, California,
for the defendant.

1 HUBEL, Magistrate Judge:

2 Defendant Prospect Mortgage, LLC ("Defendant") moves the
3 Court for an order staying this action in its entirety pending
4 resolution of Defendant's motion to transfer this case to the
5 Judicial Panel on Multidistrict Litigation ("JPML") for
6 coordinated and consolidated pretrial proceedings pursuant to 28
7 U.S.C. § 1407 ("the MDL Motion"). For the reasons that follow,
8 Defendant's motion (Docket No. 25) to stay is denied.

9 **I. FACTS AND PROCEDURAL HISTORY**

10 Plaintiffs Gregory Barnhart, Joe Conyard, Douglas Frank,
11 Thomas Hefflinger, John Howe, Don Leask, Samuel Nesbitt, Anna
12 Reutov, Eric Skinner, and Juha Tuominen (collectively,
13 "Plaintiffs") were opt-in plaintiffs in a collective action in
14 the Eastern District of California ("the *Sliger* action"). The
15 *Sliger* action was a conditionally certified collective action
16 that was subsequently decertified via stipulation in January
17 2013. Three months later, Plaintiffs and 233 other opt-in
18 plaintiffs filed thirty-seven separate federal court cases in
19 various district courts across the country within a span of
20 seven days. The Nichols, Kaster law firm represents Plaintiffs
21 in all thirty-seven cases and Seyfarth, Shaw represents
22 Defendant in all thirty-seven cases.

23 Plaintiffs filed their complaint in the present action on
24 April 19, 2013, alleging violations of the Fair Labor Standards
25 Act ("FLSA"), 29 U.S.C. § 201 et seq., and Oregon law. The gist
26 of Plaintiffs' complaint is that Defendant improperly classified
27 them as "exempt" from the overtime pay requirements of the FLSA
28

1 and state law. Plaintiffs allege they routinely worked in
2 excess of forty hours per week and were not provided with
3 overtime compensation. Instead, Plaintiffs were paid on a
4 commission-only basis, which resulted in periods where
5 Plaintiffs received less than minimum wage.

6 On June 13, 2013. Defendant was served with the complaint,
7 amended complaint (filed on May 31, 2013), summons, and civil
8 cover sheet, along with a request for waiver of service of
9 summons via email. Defendant timely filed its answers to
10 Plaintiffs' amended complaint on August 12, 2013, and demanded
11 a jury trial.

12 On August 13, 2013, the parties held their Federal Rule of
13 Civil Procedure ("Rule") 26(f) conference. Three days later, on
14 August 16, 2013, Defendant filed the MDL Motion, seeking to have
15 this matter, as well as thirty-six other similar matters filed
16 in different district courts across the country, transferred to
17 the Northern District of Illinois for coordinated or
18 consolidated pretrial proceedings. Defendant anticipates that
19 the MDL Motion will be heard on the JPML's December 5, 2013
20 calendar in Las Vegas, Nevada and will be decided in early 2014.

21 On August 28, 2013, the parties filed their joint proposed
22 scheduling order and discovery plan in this action. On
23 September 6, 2013, Defendant filed its motion to stay which is
24 now before the Court.

25 **II. LEGAL STANDARD**

26 "[T]he power to stay proceedings is incidental to the power
27 inherent in every court to control the disposition of the causes
28 on its docket with economy of time and effort for itself, for

1 counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S.
2 248, 254 (1936). "Staying an action pending a decision in
3 concurrent multidistrict litigation proceedings is 'within the
4 court's discretion' and is 'appropriate when it serves the
5 interests of judicial economy and efficiency.'" *Oregon v.*
6 *Johnson & Johnson*, No. 11-CV-86-AC, 2011 WL 1347069, at *2 (D.
7 Or. Apr. 8, 2011) (quoting *Rivers v. Walt Disney Co.*, 980 F.
8 Supp. 1358, 1360 (C.D. Cal. 1997)). "Courts should consider
9 three factors when determining whether to stay an action: '(1)
10 potential prejudice to the non-moving party; (2) hardship and
11 inequity to the moving party if the action is not stayed; and
12 (3) the judicial resources that would be saved by avoiding
13 duplicative litigation if the cases were in fact consolidated.'" "
14 *Id.*

15 III. DISCUSSION

16 Defendant concedes that it will need to take the depositions
17 of all of the plaintiffs in this action. (Def.'s Mem. Supp. at
18 9.) According to Plaintiffs, their depositions are necessary to
19 Defendant's so-called "outside sales defense," which is unique
20 to each individual plaintiff and which played a role in
21 Plaintiffs' counsel's decision to stipulate to decertification
22 in *Sliger*. However, Defendant argues that consolidation by the
23 JPML will prevent duplicative depositions of witnesses that may
24 have relevant information in all of the actions, such as
25 Defendant's corporate witnesses in Rule 30(b)(6) depositions.

26 After reviewing each parties' papers, the Court
27 concludes that discovery will to a very significant extent
28 proceed on an individual plaintiff basis. This discovery can

1 and should proceed without offending the three factors courts
2 consider when determining whether to stay an action. Discovery
3 that will have relevance in all of the post-*Sliger* actions, such
4 as the deposition of Defendant's Rule 30(b)(6) designees, should
5 be deferred until the JPML rules on the MDL Motion. Likewise,
6 to the extent these parties cannot resolve any potential
7 discovery disputes through conferral on their own, and where a
8 discovery decision in this Court on the issue may have
9 significant implications for the other thirty-six pending cases,
10 deferral of such a decision until after a JPML decision may be
11 necessary.

12 **IV. CONCLUSION**

13 For the reasons stated, Defendant's motion (Docket No. 25)
14 to stay is denied. Defendant's requests for judicial notice
15 (Docket Nos. 25-4, 34) are denied as moot. After conferral as
16 required by the rules, any proposed discovery that would
17 interfere with Multidistrict Litigation should be presented to
18 this Court for assistance.

19 IT IS SO ORDERED.

20 Dated this 30th day of September, 2013.

21 /s/ Dennis J. Hubel

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23 DENNIS J. HUBEL
United States Magistrate Judge

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